

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
HONORABLE JOSEPHINE L. STATON, JUDGE PRESIDING
CERTIFIED TRANSCRIPT

STEVEN RUPP, ET AL.,)
)
 PLAINTIFFS,)
)
 vs.) SACV NO. 17-00746-JLS
)
 XAVIER BECERRA, ET AL.,)
)
 DEFENDANTS.)
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SANTA ANA, CALIFORNIA
FRIDAY, MAY 31, 2019
10:57 A.M.

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1 **SANTA ANA, CALIFORNIA; FRIDAY, MAY 31, 2019; 10:57 A.M.**

2 THE CLERK: Calling Calendar Item No. 3.

3 SACV 17-00746-JLS, Steven Rupp, et al., versus Xavier
4 Becerra.

10:57:43 5 Counsel, once you get situated, please, state your
6 appearances for the record.

7 MR. BRADY: Good morning, Your Honor.

8 Sean Brady, on behalf of the plaintiffs.

9 THE COURT: Good morning.

10:58:07 10 MR. CHANG: Good morning, Your Honor.

11 Peter Chang, on behalf of defendant Becerra.

12 MR. ECHEVERRIA: Good morning, Your Honor.

13 John Echeverria for the defendant.

14 THE COURT: Good morning.

10:58:17 15 All right. We are here on the cross-motions for
16 summary judgment, and I will just hear from the parties.

17 I'll just give you a few minutes to be heard. If
18 I have any questions to ask, I will jump in with those. But
19 on summary judgment motions, I just want you to have an
10:58:38 20 opportunity to highlight whatever you think maybe wasn't
21 clear in your brief or what you think the high points of
22 your briefing would be.

23 And we'll begin with the plaintiff.

24 MR. BRADY: Thank you, Your Honor.

10:58:55 25 This case is about whether the Government can ban

10:59:01 1 an extremely popular class of firearms by merely declaring
2 them dangerous assault weapons and then, when challenged on
3 that designation, justify it with evidence gathered by third
4 parties *post hoc* that arguably show that those firearms can
10:59:20 5 result in slightly more casualties when used in an
6 exceedingly rare type of criminal attack: A public mass
7 shooting.

8 The answer to whether the Government can do that,
9 Supreme Court precedent tells us is no. And that's because
10:59:35 10 the tests that the *Heller* court laid out is that arms that
11 are typically possessed by law-abiding people for lawful
12 purposes are protected under the Second Amendment. What
13 that means is, while they can be right, those arms that
14 qualify under that --

10:59:50 15 THE COURT: Specifically, in that case, they were
16 talking about handguns, right?

17 MR. BRADY: Indeed.

18 THE COURT: But the common -- and they referenced
19 them as being "the most commonly used and preferred method
11:00:04 20 of self-defense in the home."

21 MR. BRADY: Correct.

22 THE COURT: Okay. And they also distinguished
23 that from weapons that might be considered dangerous but
24 ones that they described as like military weapons, correct?

11:00:20 25 MR. BRADY: Correct. There was dicta, if you

11:00:24 1 will, about an M16 machine gun that's used by the military
2 that could conceivably be outside of the Second Amendment.
3 It suggested that there are arms that will be dangerous and
4 unusual, I assume, a rocket-propelled grenade or grenades or
11:00:40 5 that sort. Because they are inherently dangerous, they can
6 explode. They can accidentally kill just by having them.

7 The sort of arms, I believe, that the *Heller* court
8 was referring to, if you look at the *Staples* case, the
9 Supreme Court has expressly distinguished between the M16
11:00:58 10 and the AR-15 in this very fashion.

11 Now, they weren't -- this was pre-*Heller*, so they
12 weren't discussing it in the context of: Is it
13 Second-Amendment protected? But I think it's very telling
14 that the Supreme Court expressly distinguished the AR-15 as
11:01:14 15 so different from the M16 that -- *mens rea* that the gun was,
16 you know, problematic, was criminal to possess, could not be
17 inferred. I think that that, basically, says that there is
18 such a distinction between these two types of guns that they
19 cannot be assumed to be the same.

11:01:32 20 THE COURT: That was a very different context
21 though, wasn't it, that case?

22 MR. BRADY: It is, but I think that -- you know,
23 because they are so -- you know, if the Court is going to
24 say that you cannot infer criminal intent -- that if it was
11:01:45 25 a machine gun, if it was an M16, the possessor should

11:01:49 1 know -- they should be on notice that it was a bad -- that
2 it was a criminal gun [sic].

3 THE COURT: In criminal cases, we have very
4 different kinds of standards that are applied in deciding
11:01:59 5 whether you can hold someone criminally liable, correct?

6 MR. BRADY: Of course. Yes. I'm not trying to
7 say that the standards are the same. What I'm getting at is
8 that in that case the Court made the distinction between the
9 two that said they cannot -- they are apples and oranges and
11:02:16 10 went so far as to say that they are common -- that they're
11 the civilian version of that rifle and that they have been
12 lawfully owned -- generally lawfully owned.

13 And I think it's telling that -- the author of
14 that opinion, Justice Thomas, wrote a dissent to the
11:02:33 15 rejection of the *Freeman v. Highland Park* case which was,
16 essentially, involving this very same issue -- a challenge
17 to, essentially, the same type of law. And Justice Thomas
18 laid out his opinion that these types of rifles are
19 protected by the Second Amendment.

11:02:51 20 Now, that doesn't -- you know, that's obviously
21 not binding authority on this Court, but it goes to show you
22 where Justice Thomas was in writing the *Staples* opinion and
23 where he's at on this issue.

24 So, on that point as to -- I think it's crucial
11:03:07 25 for the Court to understand that the plaintiffs do not need

11:03:12 1 to prove that these firearms are not dangerous or unusual.
2 The burden is wholly on the State to make that case, and
3 that's because *Heller* says that bearable arms are
4 *prima facie* protected by the Second Amendment. And *Heller*
11:03:30 5 defines "bearable arms," "as" a weapon of offense or thing
6 that a man wears for his defense or takes into his hands
7 that is carried for the purpose of offensive or defensive
8 action." Rifles of any sort necessarily meet that
9 definition of "bearable arms."

11:03:47 10 THE COURT: Would a grenade?

11 MR. BRADY: Yes, it would, but that's my point.
12 It would meet that definition. And it is protected. And
13 then it is the State's burden to show that they are
14 dangerous and unusual. I think the State wouldn't meet its
11:04:00 15 burden to say that a grenade is dangerous and unusual,
16 because you can't go to Big Five, or Turner's, or Wal-Mart
17 and buy grenades. I don't know anybody who owns grenades.

18 The evidence shows that you can -- or prior to
19 this law, you could go to Big Five, Wal-Mart, places to buy
11:04:17 20 these very rifles, but they are owned by the millions; that
21 there are --

22 The world series of shooting sports, if you will,
23 involves these very rifles. These are not grenades. These
24 are the most popular rifle [sic] in the country. The
11:04:33 25 evidence -- the State's suggestion -- and I think it's

11:04:36 1 another crucial point to understand the evidence here
2 that -- that --

3 The State says, *Assault weapon registration*
4 *numbers are the right number to look at in determining*
11:04:51 5 *commonality*. That is -- I'm sorry. I don't want to, you
6 know, lose decorum. But it strains credulity to even
7 suggest that that is a proper number, in light of the fact
8 that there's been an Assault Weapon Control Act in place for
9 30 years that people were able to modify their rifles so
11:05:09 10 that they didn't have to register them. People could take
11 them out of state. There was a -- it is known that there
12 was very low compliance with the registration rate for
13 people, not because they are scofflaws but out of ignorance
14 that they even had to register.

11:05:25 15 You have no idea how many people come into our
16 office saying, *Oh, I got arrested for having this assault*
17 *weapon. They told me I had to register it. I didn't know*
18 *that.*

19 So the suggestion that the California registration
11:05:36 20 numbers are a better barometer of the popularity to these
21 rifles is a farce. And the far better number is to look at
22 Professor English, plaintiffs' expert's, report where he
23 lays out industry reports and surveys where it shows up to
24 90-some percent of gun dealers sell these rifles, out of a
11:06:04 25 survey of 260 of them and that about half of hunters and

11:06:09 1 sport shooters were -- said that they own these rifles.

2 THE COURT: Does it have -- is it just popularity,
3 in general? Or is it popular use for self-defense in the
4 home?

11:06:20 5 MR. BRADY: I think that self-defense is a
6 critical component. You know, the *Heller* court says "lawful
7 purposes." It doesn't specify self-defense, but
8 self-defense is certainly at the core.

9 And so, while a gun, say, an Olympic-style pistol
11:06:36 10 that wouldn't be used for self-defense may meet -- may have
11 some Second Amendment protection because it's used for
12 lawful purposes, I think that the Government's burden to
13 justify a restriction on an arm of that sort would be far
14 lower than an arm that is typically possessed for
11:06:53 15 self-defense.

16 And the evidence, again, shows that these arms are
17 indeed owned for self-defense. The surveys that --

18 THE COURT: Is there any showing that they're,
19 typically, used in self-defense?

11:07:08 20 MR. BRADY: Your Honor, I think that -- are you --
21 when you say "used," are you --

22 THE COURT: People can own -- I understand that
23 what you might say is that there's some evidence that people
24 who purchase them, purchase them for purposes of
11:07:23 25 self-defense; that you can find people who do that. And

11:07:26 1 your argument would be: They're in large number.

2 What if the evidence were to reflect -- I'm not
3 sure how relevant this is. I'm simply asking the question:
4 What if the evidence were to reflect that these are not
11:07:42 5 weapons that are useful in self-defense? Because of the
6 nature of the weapon that it's most useful in military kind
7 of operation or using when you're, you know, out on a
8 killing field. And it's not the most useful weapon or a
9 useful weapon or as useful of others for self-defense.

11:08:03 10 Do I look at what do people say they're buying it
11 for when they buy it, as opposed to what is -- whether it
12 really can be used effectively for self-defense in the home?
13 Or whether the legislature decided -- made that decision,
14 right?

11:08:18 15 I mean, if we get out -- there are two questions,
16 right? Does it fall within the scope of the
17 Second Amendment? And you disagree on that. The defendants
18 argue that because this is most useful in military
19 circumstances that under *Heller*, it is not covered by the
11:08:38 20 Second Amendment. It's outside the scope.

21 And then, the second argument is: Okay. Let's
22 assume that that is incorrect and that it is within the
23 scope of the Second Amendment. Then, we look at the
24 intermediate scrutiny level. There's no disagreement as to
11:08:57 25 that level of scrutiny, correct?

11:08:59 1 MR. BRADY: I would suggest that there is, but I
2 don't think it matters. I don't even think you need to get
3 to the intermediate scrutiny standard, because it is a ban.
4 We're not talking about a regulation.

11:09:08 5 So once you meet the first step of *Chovan*; that
6 these rifles meet -- that they are protected by the Second
7 Amendment, what good is Second Amendment protection, if you
8 can then go and ban them?

9 THE COURT: I'm not sure that that's consistent
11:09:23 10 with the facts or with the law. Let's just assume that this
11 Court is going to use an intermediate scrutiny level that
12 doesn't treat this as an entire ban that is per se violative
13 of the Second Amendment and that the Court will actually
14 apply a level of scrutiny.

11:09:40 15 MR. BRADY: Sure.

16 THE COURT: And that that would be intermediate.

17 Then, if the legislature has made -- I'm just sort
18 of moving this on to the next argument, because I want to
19 make sure I have time to hear from both sides, and I've read
11:09:50 20 the papers.

21 If the legislature has decided that based on the
22 evidence before it in promoting general safety of all of its
23 citizens that a ban on these kinds of weapons -- ones that
24 have been used in mass shootings and are very effective in
11:10:13 25 mass shootings -- it's in the interest to -- not to allow

11:10:16 1 the possession of those in the way that the law limits it.
2 Obviously, there's grandfathering. There are other things.
3 But if the legislature has made that determination, tell me
4 why the Court should reject that.

11:10:32 5 MR. BRADY: Sure. As an initial point, the
6 legislature considered hardly any evidence in passing the
7 Assault Weapon Control Act, initially, and then it only
8 amended it to go after additional firearms when they
9 realized that their first iteration didn't cover the
11:10:50 10 firearms they wanted to, because, frankly, they don't know
11 how to write this law. They don't know what they want.
12 They just know that they want a law that goes after
13 scary-looking guns.

14 So that's why I said in my opening statement that
11:11:02 15 they are justifying this law *post hoc* with evidence gathered
16 by third parties. And the reason this Court should reject
17 that evidence that the State puts forth -- not that the
18 legislature considered but that the State puts forth to
19 *post hoc* justify the legislature's decision to ban these
11:11:22 20 firearms, is because the evidence is unreliable. And
21 we've -- I don't want to go into the *Daubert* motions that
22 plaintiffs filed. We can consider those later if they come
23 up, but I think in those motions you will see -- and we've
24 laid it out in these papers on a more limited basis.

11:11:39 25 You can put their evidence -- the State's evidence

11:11:42 1 into four categories. One of which is Dr. Colwell, the
2 expert who says that assault weapons cause worse injuries
3 and more injuries. He is --

4 It is objectively unequivocally erroneous that
11:12:02 5 assault weapons cause a worse injury. Nothing -- an
6 "assault weapon" is a technical term, right?

7 It is defined by a pistol with an adjustable stock
8 and a flash suppressor. The undisputed evidence shows that
9 not one of those features has any effect on what a bullet
11:12:20 10 does when it leaves the rifle. So if you take the pistol
11 grip off, you have a fixed stock. You don't have a flash
12 suppressor. You have the same rifle with the same barrel
13 length shooting the same ammo. The identical wound results.

14 So it is -- it is unobjectively false to say that
11:12:33 15 assault weapons cause worse wounds. Now, he moves on and
16 says, *Well, it's not just the individual wound.* That's what
17 the State argues. It is that they are able to produce
18 multiple of these wounds.

19 Well, in Dr. Colwell's testimony, he explained
11:12:50 20 that he could not say at what rate an assault weapon fires.
21 He can't say -- so he's basing on an assumption of technical
22 knowledge that he can't -- that he doesn't have, frankly.
23 He admits he has no technical knowledge of firearms. He
24 can't say how rapidly rounds were fired just by looking at
11:13:11 25 wounds. I think it's very telling that he was --

11:13:13 1 By the way, Dr. Colwell is a great man, a hero,
2 and I wish there were more of him in the work that he does;
3 but, frankly, he doesn't know what he thinks he knows in
4 this regard. He's basing his entire premise that assault
11:13:28 5 weapons cause worse injuries on being told by a third
6 party -- by officers, usually, or the victim -- that
7 somebody shot -- the victim was shot with an assault weapon.
8 And he's -- from memory, over 30 years or so of practicing,
9 he's saying, *Yeah, I've been told, and I sort of noticed*
11:13:45 10 *that when people say they've been shot by assault weapons*
11 *that the wounds tend to be worse.*

12 That's just unreliable. That's not scientific,
13 Your Honor. It cannot be relied upon, especially when he
14 doesn't have the technical background. So that's just the
11:14:03 15 wounding.

16 Then, you get to the very -- you know, the
17 argument from Lucy Allen that when assault rifles are used
18 in a mass shooting, that casualty rates go up. Her analysis
19 where she says "Assault rifle shootings includes victims who
11:14:20 20 were shot" -- admittedly, in her deposition -- "were shot by
21 handguns, or shotguns, or non-assault weapon."

22 If a shooting used multiple firearms --

23 For example, the Aurora, Colorado shooting, the
24 shooter used an assault rifle, a shotgun and a pistol. She
11:14:37 25 includes all of those victims in her assault rifle casualty

1 counts. That evidence is completely unreliable, just based
2 on that alone.

3 Setting aside the fact that the State's own
4 expert, Mike Mesereau, says that you have to have expert
11:14:54 5 knowledge of assault weapons in order to identify them --
6 and Lucy Allen has not indicated she has any background in
7 identifying technical firearms, let alone assault weapons,
8 so her entire analysis is unreliable.

9 Then we get to my favorite, Professor Donahue,
11:15:16 10 who -- if you read Professor Donahue's report -- and I
11 invite the Court to read it and pay attention to how it's
12 written and what he relies on -- it is not an expert report.
13 It is a legal brief. He is literally making the case for
14 why assault weapon bans are good. He is not objectively
11:15:39 15 evaluating anything. And I think, just to give a prime
16 example of his 50-page report that I could go through and
17 bore the Court with every little detail on it, but --

18 THE COURT: No, please.

19 MR. BRADY: -- I will not --

11:15:51 20 THE COURT: I have all the papers, so just
21 highlight -- I'm going to give you a few more minutes.

22 MR. BRADY: Sure. I just think it's very telling
23 that Professor Donahue has a section in his report where he
24 says, "Law enforcement and military support for assault
11:16:04 25 weapon bands," and then he cites to two individuals who

1 support assault weapon bans: One was a former military
2 officer turned U.S. Attorney.

3 What possible relevance does that have for an
4 expert? That's the stuff of a State making an argument in a
11:16:25 5 brief, not an expert providing insight as to the credibility
6 of evidence. Not to mention, you know, his initial findings
7 on gun ownership rates, which I don't even think it's
8 relevant here, but it's relevant to show that he's
9 unreliable because it's based on material he put together
11:16:51 10 three years ago. He purports to opine on current rates of
11 gun ownership, and he's relying on material he put together
12 many years ago. And then when confronted with, *Well, did*
13 *you consider this survey -- this more recent survey that you*
14 *cite in another part of your motion for another proposition?*

11:17:10 15 And he says, *No.* And his excuse is, *Oh, that's old*
16 *material. I didn't bother looking at updated things.*

17 That means he's either unreliable or he is biased
18 and trustworthy. And I personally think it's both, frankly.
19 So that's their evidence.

11:17:29 20 Their other experts, Blake Graham and Michael
21 Mesereau, all they simply do is agree with our self-defense
22 experts that the features that are being restricted make a
23 firearm more user-friendly, more controllable and more
24 accurate. They just think that that's a bad thing. And I
11:17:51 25 don't --

11:17:51 1 I don't see how the State can say that people
2 should have less controllable, less accurate firearms in the
3 hopes that we might make a mass shooter less capable of
4 creating casualties. I mean, think about that. That would
11:18:12 5 be like saying, *Oh, we have to not allow adjustable seats in*
6 *a car so that the getaway driver, you know, has a tougher*
7 *time getting away from the bank. It's --*

8 Quite frankly, I'm trying to take this seriously.
9 The State's law is an unserious response to a very serious
11:18:35 10 issue and they cloak it in, you know, this facade that they
11 have evidence supporting this restriction, and they simply
12 do not. The evidence that they've put forth is, frankly,
13 inadmissible, most of it. And all it does show from their
14 two guys who don't have a clue about guns is that these guns
11:18:56 15 work good and that people should not have guns that work
16 good.

17 I would like to just close by saying that when the
18 the State -- all of the State's arguments that rely on
19 assault weapons being used disproportionately in particular
11:19:14 20 crimes, they should be barred from making that argument.
21 They put forth in discovery that's in the record that they
22 have no idea how many of these firearms are out there, and
23 they do not have sufficient material to even make an
24 estimate. And, yet, they're able to figure out whether
11:19:31 25 these arms are disproportionately used or not. You have to

11:19:35 1 know the amount before you can say something is
2 disproportionate, right?

3 So unless Your Honor has any other questions --

4 THE COURT: I don't have any other questions.

11:19:44 5 Thank you.

6 MR. CHANG: Good morning --

7 THE COURT: And since you each have -- you're each
8 filing cross-motions, I'm just going to hear from each side
9 once. There's no burdens that are greater on one side than
11:20:01 10 the other, necessarily.

11 So go ahead.

12 MR. CHANG: Yes, Your Honor.

13 I think it's significant in this case that the
14 plaintiffs has not addressed or attempted to distinguish
11:20:15 15 this case from the five Circuit Court decisions that have
16 upheld assault weapons bans in other -- in other
17 jurisdictions.

18 The uniform weight of the Circuit Court decision
19 is that assault -- States may restrict assault weapons,
11:20:34 20 including assault rifles. The Fourth Circuit in *Kolbe* even
21 went so far as to hold that assault weapons are not within
22 the scope of the Second Amendment, because it is like the
23 M16, a weapon most useful in the military.

24 And I think the -- it's also significant to
11:20:56 25 establish clearly what the legal standard is, under an

11:21:00 1 intermediate scrutiny for the Court's review. The Court --
2 and the Ninth Circuit made this very clear in the *Peña*
3 case. The Court is not to weigh evidence as in a criminal
4 trial. Instead, what the Court is looking for is whether
11:21:15 5 the State has put forward evidence that fairly supports the
6 legislature's judgment as to how the law could further the
7 public interest in public safety.

8 THE COURT: So if the legislature expressed its
9 judgment as to how it would further public safety but
11:21:36 10 there's not evidence in the -- in the record that the
11 legislature had all the evidence that you're presenting now
12 in front of it at the time, does that mean that I disregard
13 the evidence that you are providing now?

14 MR. CHANG: No, Your Honor.

11:21:49 15 And this was addressed squarely by the
16 Ninth Circuit in *Peña*. The Court said there that
17 *Legislatures are not required to put together a record of*
18 *everything it reviewed when it passes a law.*

19 And, you know, for that reason, the Court
11:22:06 20 shouldn't just look to exactly what the legislature had
21 looked at. Instead, the Court may look at the statement put
22 forward everything that it thinks that is relevant to the
23 legislature -- you know, to the case and that these are
24 legislative facts, not adjudicative facts.

11:22:25 25 But in any event, in this case, you know, we

11:22:29 1 have -- the State has submitted an abundance of evidence to
2 support its position. But the legislature had also
3 considered evidence when it passed the -- initially passed
4 the AWCA in 1989, and also looked at additional evidence
11:22:46 5 every time it's been amended. I believe that's also in the
6 record.

7 And so, while the parties, you know -- the State
8 believes that, you know -- what the plaintiffs are asking
9 for is for the Court to actually weigh the evidence, which
11:23:00 10 the Ninth Circuit said the Court shouldn't do and actually
11 require the State to prove with scientific precision that
12 the law actually enhances public safety or will actually
13 enhance public safety and must be justified by a causal link
14 that assault rifles cause harm.

11:23:24 15 And, you know, that's just not what the legal
16 standard requires here. But even under that standard, we
17 believe that the State has put forward sufficient evidence
18 that assault rifles do cause increased casualties when
19 they're used in public mass shootings. And that can be
11:23:43 20 clearly seen in Defendants' Exhibit 6, the data that has put
21 been together by defendants' expert, Lucy Allen, who clearly
22 had shown by the numbers that when -- in the case of public
23 mass shootings, when there's no assault weapon, the
24 large-capacity magazine used, you know, I believe it was
11:24:03 25 nine casualties on average per incident.

11:24:07 1 When you have assault weapons -- when you have --
2 just have large-capacity magazines, that number jumps up to,
3 I believe, 16. And when you have assault weapons and
4 large-capacity magazines, that number jumps up even higher
11:24:23 5 to 41. I think the record does show that assault weapons,
6 separate from large-capacity magazines, increases the number
7 of casualties.

8 And I want to say that the -- you know, the
9 plaintiffs -- I want to address a couple of things that the
11:24:44 10 plaintiffs have raised: That the effect of the assault
11 rifle rounds that it causes when it's being used to shoot
12 someone, I don't believe that's actually -- I don't believe
13 there's an actual dispute about that, because plaintiffs'
14 own expert, the ballistic expert, Mr. Boone, testified that
11:25:10 15 the assault rifle rounds do cause more damage when
16 there's -- they're fired into a person, because the bullets,
17 themselves, they do more permanent damage because the bullet
18 actually rotates inside someone's body, and there's
19 tremendous cavitation that causes tissue [sic] beyond just
11:25:34 20 what the actual bullet penetrates.

21 And he also testified that, you know, in contrast
22 to a handgun round, that the assault rifle wounds -- wounds
23 caused by assault rifle rounds are much harder to repair.
24 Well, as with handgun rounds, physicians are -- it's much
11:25:55 25 easier for physicians to repair those wounds.

11:25:59 1 THE COURT: I think -- and I may be wrong. I
2 thought that the plaintiff was merely saying that assault
3 weapons that don't come within the scope of the band,
4 perhaps because they have a mixed magazine or something to
11:26:10 5 that effect, those don't cause any greater wounds or
6 different?

7 Am I mistaken in that? Are you saying handguns
8 and assault weapons cause the same damage?

9 MR. BRADY: No, you have it right, Your Honor.
11:26:23 10 The rifle -- comparing rifles and handguns is comparing
11 apples and oranges. We're saying that the assault weapon
12 features have zero to do. So their argument is against
13 rifles in general, not, you know, assault weapons.

14 MR. CHANG: Thank you, Your Honor, for that
11:26:37 15 clarification.

16 In that case, then the difference is that the
17 assault weapons -- assault rifles with the features, while
18 they may cause the same damage as a hunting rifle, for
19 example, it's the fact that the features allow them to be
11:26:54 20 fired more rapidly and with more accuracy. And evidence
21 does show that when assault rifles are used, more shots are
22 fired and more -- they're leading to more casualties.

23 Now, we think the Court could uphold the
24 challenged restrictions on assault rifles, based under
11:27:18 25 intermediate scrutiny. As most other courts have done, we

11:27:25 1 do also think that the evidence is also clear for the Court
2 to rule similarly to what the Fourth Circuit did in *Kolbe*
3 that assault rifles are simply outside the scope of the
4 Second Amendment.

11:27:38 5 The only difference between assault rifles, for
6 example, and the AR-15 that's restricted under the AWCA and
7 the M16, which is a machine gun, is that the M16 has the
8 ability to fire in semiautomatic mode and automatic mode,
9 which -- while the assault rifles can only fire in
11:27:58 10 semiautomatic mode but that difference -- there's,
11 essentially, very little difference.

12 Congress found, based on evidence, that the
13 semiautomatic weapons can be fired nearly as fast as
14 machine guns between 2- to 500 rounds per -- I believe it
11:28:19 15 was per minute. And the military even instructs its
16 soldiers to normally deploy their M16s in a semiautomatic
17 configuration.

18 So there's -- while there is a technical
19 difference between the M16 machine gun and assault rifles,
11:28:39 20 that difference is for purposes of the Second Amendment and
21 for purposes in real-life applications, the State submits
22 that that purpose is inconsequential.

23 And, finally, if the Court has no more questions,
24 the State would ask that if the Court is considering
11:29:08 25 granting the plaintiffs' motion, that we would ask the Court

11:29:11 1 to issue a stay at the same time it issues its decision so
2 there's not a mad rush for people to acquire these type of
3 weapons before -- and the stay can be eventually issued.

4 THE COURT: All right. Thank you.

11:29:28 5 I'll take the matter under submission. And the
6 Court's ruling will be posted on the docket.

7 MR. CHANG: Thank you, Your Honor.

8 Yes. And the parties would like to jointly
9 request that the Court vacate the remaining dates on the
11:29:42 10 schedule. I believe there's a motion for *in limine*,
11 pretrial conference and also the hearing notice for the
12 plaintiffs' *Daubert* motions, until the Court has resolved
13 the parties' cross-motions.

14 THE COURT: I often don't do that; but in this
11:29:58 15 case, I will. I think under the circumstance of
16 cross-motions here and the level of preparation, et cetera,
17 it makes sense to vacate the dates pending the Court's
18 resolution, depending upon the Court's resolution.

19 Then, what I will also order is that within 10
11:30:20 20 days of the Court's determination on a motion, to the extent
21 that any claim remains viable in terms of moving forward in
22 this Court, that the parties file a joint report
23 recommending new dates, all right?

24 MR. CHANG: Thank you, Your Honor.

11:30:40 25 THE COURT: Thank you.

11:30:41 1 THE CLERK: All rise.

2 (At 11:30 a.m., proceedings were adjourned.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: October 27, 2019

/s/DEBORAH D. PARKER
DEBORAH D. PARKER, OFFICIAL REPORTER

Deborah D. Parker, U.S. Court Reporter